IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 45 of 2007
In
OFFICIAL LIQUIDATOR REPORT No.166 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

M/S. TRIVEDI INFRASTRUCTURE CORPORATION - Applicant(s)
Versus
O.L. OF M/S. AMBICA MILLS LTD. & 17 - Respondent(s)

==========

Appearance :
MR BHARAT T RAO for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 9,13 - 18.
MR BH BHAGAT for Respondent(s) : 10 - 11.
MR DS VASAVADA for Respondent(s) : 12,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/02/2007

ORAL JUDGMENT

1. Present application has been filed by the applicant – M/s. Trivedi Infrastructure

Corporation (the purchaser) for an appropriate order to grant extension of 30 days time to deposit 25% of purchase consideration pursuant to the order passed by this Court dated 28.12.2006 passed in Official Liquidator Report No.166 of 2006. It is also further prayed to direct the Official Liquidator to accept the same within the extended period with interest on such delayed payment at the prime lending rate as fixed by RBI. It is also further prayed to consider for granting permission to the applicant to nominate a person as the total sale consideration is of Rs.33.50 crores.

2. M/s. Shri Ambica Mills Limited was ordered to be wound up by this Court and the Official Liquidator attached with this Court was appointed as Official Liquidator of the said company and the assets of the company in liquidation. That one of the property was Survey No.49, Final Plot Nos.192, 193, 194 and 195 TP Scheme No.2 admeasuring 42,180 sq mts of land situated at Nr. Divan Ballubhai School,

Kankaria, Ahmedabad including T.K. Office and compound wall but except records. The tenders / offers were invited by the Sale Committee constituted by this Court and one Oriental Infrastructure Private Limited was found to be the highest offerer who had offered to purchase the aforesaid property for a sale consideration of Rs.21.35 Crores. The Official Liquidator submitted Official Liquidator Report No.166 of 2006 to consider the said offer and if thought fit, to confirm the sale in favour of said Oriental Infrastructure Private Limited being the highest offerer. The said Official Liquidator Report was placed before this Court on 27th December, 2006 and at that time, Shri Anip Gandhi, learned advocate appeared on behalf of the Kalptaru Power Transmission Limited and he submitted that his client is ready and willing to offer more than Rs.22.75 Crores subject to further rebidding between the parties. It was submitted by him that his client is also ready and willing to deposit Rs.10 Lacs by way of late fee charges. Shri P.S.Godiawala,

learned advocate appeared on behalf of one Astha Associates and he submitted that his client is also ready and willing to participate in the rebidding subject to payment of Rs.10 Lacs towards late fee charges. Similarly, one Shri Jatin Trivedi, Chief Executive Officer (CEO) of the applicant – Trivedi Infrastructure Corporation appeared personally before this Court and submitted that he would like to submit his offer and take part in rebidding and that he will deposit an amount of Rs.52.50 Lacs towards EMD by demand draft as well as Rs.10 Lacs (non-refundable) by way of late fee charges by 28.12.2006 with the Official Liquidator. With the consent of the learned advocates appearing for the respective parties, on depositing EMD and Rs. 10 Lacs by way of late fee charges, all the aforesaid parties were permitted to take part in rebidding. After inter-se rebidding between the parties, the applicant – Trivedi Infrastructure Corporation was found to be the highest offerer who had offered to purchase lot No.II for a sale consideration of Rs.33.50

Crores. Having satisfied with the said offer that the same can be a fair market price/value, this Court by order dated 28.12.2006 accepted the said offer of the applicant and confirmed the sale for lot No.II in favour of the applicant for a sale consideration of Rs.33.50 Crores on the following terms and conditions :-

"(A) The sale is on "**as is where is and whatever there is basis.**"

(B) The purchaser i.e. Trivedi Infrastructure Corporation to pay 25% of the purchase consideration within 1 month and the balance amount of purchase consideration will have to be paid within 3 months thereafter by the purchaser and the earnest money deposited by the offerer shall be adjusted in last installment.

(C) The stamp duty, registration charges, AUDA/ Society charges and all other incidental charges thereto shall be borne by the purchaser.

(D) The purchaser shall be liable to pay all the statutory dues, if any, due and payable on the properties of the said company for the period after the date of winding up order and the payment of such dues for pre liquidation period

shall be settled as per the provisions of the Companies Act; 1956. However, dues, taxes, cess, if any, applicable on the sale of assets shall be paid by the purchaser.

(E) No nomination will be permitted.

(F) The property shall be handed over to the purchaser on payment of full sale consideration to the Official Liquidator. The purchaser to agree on other terms and conditions of the tender form over and above the conditions stated hereinabove.

(G) It will be open for the highest offerer to level the lands in question under the supervision of the Official Liquidator. It will also be open for the purchaser to depute the security guards outside the aforesaid properties at its own cost but the same would also be under the supervision of the Official Liquidator till full consideration is paid.

(H) It will be open for the purchaser to pray for the assistance of the Official Liquidator to remove the encroachment and the Official Liquidator to assist the purchaser in removing the encroachment, if any.”

3. Thus, the sale came to be confirmed in favour of the applicant on the aforesaid terms and

conditions which was agreed by the applicant. As per the aforesaid terms and conditions, the applicant was required to deposit 25% of the purchase consideration within a period of one month from 28.12.2006 and the balance amount of purchase consideration was required to be paid by the applicant within three months thereafter.

4. It appears that the applicant has not deposited 25% of the purchase consideration within a period of one month i.e. on or before 28.1.2007 and therefore, the applicant has preferred the present application for extension of time to pay 25% of the purchase consideration for a further period of 30 days.

5. Shri B.T.Rao, learned advocate appearing for the applicant has submitted following cause in support of his submission to extend the time to deposit 25% of the purchase consideration for a further period of 30 days.

“(I) That the order passed by this Court was

made available only after 5 / 6 days of passing of the order on the computer.

(II) That the applicant is getting the NRI funds from overseas country, the delay has been occurred in arranging the fund from the overseas country to India through the proper channel of the RBI.

(III) For the purpose of getting the finance from the overseas country, the certified copy of the order was required and the same was made available in the second week of January – 2007 and on receipt of the same, the same was transferred to the overseas investors and this has also taken some time because in between there were some public holidays.

(IV) That the matter is under process and also keeping in mind the provisions of Income Tax Act as well as FEMA Act, certain procedures are required to be followed.

6. In that view of the matter though the funds are available, it cannot be paid and the only remedy left with the applicant is to approach this Court for extension of time. Shri B.T.Rao, learned advocate appearing for the applicant has submitted that the applicant has already deposited Rs.52.50 Lacs towards the EMD as well as Rs.10 Lacs (non-refundable) by way of late fee charges, however, on account of the reasons which are stated hereinabove and which are beyond the control of the applicant, the applicant could not make arrangement to deposit the amount through proper channel within the time period granted by this Court and therefore, it is requested to extend the time as prayed for. It is also further submitted by him that the as the offer submitted by the applicant of Rs.33.50 Crores was on a higher side, it is also requested to permit the applicant to nominate a person of his choice. It is further submitted that the applicant is ready and willing to pay the interest at the prime lending rate as fixed by the RBI for such delay as made by the

applicant.

7. The application is opposed by the learned advocate appearing for the Official Liquidator as well as the learned advocates appearing for some of the secured creditors. It is submitted by the learned advocates that as admittedly there is a breach of terms and conditions of the contract as well as tender form by not depositing even 25% of the purchase consideration within a period of one month, necessary consequences as per the order passed by this Court dated 28.12.2006 must follow and the EMD deposited by the applicant is required to be forfeited. It is also further submitted by them that as such the application for extension of time is required to be submitted within the time under which the applicant was required to deposit the amount i.e. within a period of 30 days and if thereafter the application is made for extension of time, the same is not maintainable. It is also further submitted that even on merits also and for the cause shown by

the applicant such as getting the finance from the overseas and clearance of Income Tax Department as well as FEMA, no extension is required to be granted as the offer submitted by the applicant was not depending upon any finance from overseas. It is submitted that unconditional offer was submitted by the applicant which came to be accepted by this Court and therefore, it is requested to dismiss the present application. It is also further submitted that in the tender form as well as order passed by this Court dated 28.12.2006 one of the condition was that no nomination will be permitted which the applicant has accepted and therefore, it is now not open for the applicant to submit and pray for nomination. It is submitted that even otherwise to nominate a person would be to avoid the stamp duty and as per the offer submitted by the applicant the payment would be made by the applicant but the debts would be executed in favour of the third party meaning thereby, the transfer would be in favour of the third party and would be without

payment of necessary stamp duty which is not permissible. Under the circumstances, it is requested to dismiss the present application.

8. Heard the learned advocates appearing for the respective parties.

9. It is required to be noted that the offers were invited by the Sale Committee / Official Liquidator of M/s. Shri Ambica Mills Limited with regard to lot No.II and as stated above, one Oriental Infrastructure Private Limited was the highest offerer who has offered to purchase lot No.II for a sale consideration of Rs.21.35 Crores. At the time, when the Official Liquidator Report was submitted before this Court to consider the said offer, one Shri Jatin Trivedi, CEO of the applicant appeared personally before this Court and submitted that he would also like to submit his offer and take part in rebidding and that he will deposit an amount of Rs.52.50 Lacs towards EMD by demand draft as well as Rs.10 Lacs (non-refundable) by

way of late fee charges by 28.12.2006. It is required to be noted that the applicant had not even submitted his tender pursuant to the advertisement issued by the Official Liquidator / Sale Committee inviting the offers, still as the CEO of the applicant submitted that he would be offering more than Rs.21.35 Crores, in the interest of the company and its creditors and with the consent of the learned advocates appearing for the respective parties this Court permitted said Shri Jatin Trivedi, CEO of applicant company, to take part in rebidding on deposit of EMD as well as Rs.10 Lacs towards late fee charges (non-refundable) and accordingly he participated in the rebidding. He offered to purchase lot No.II for the sale consideration of Rs.33.50 Crores. As he was the highest offerer, this Court considered his offer and confirmed the sale of lot No.II in favour of the applicant for a sale consideration of Rs.33.50 Crores. It is required to be noted that the said offer was unconditional and not depending upon any finance from the overseas

and/or other conditions and/or eventuality. As per the terms and conditions of the tender form as well as the order passed by this Court confirming the sale in favour of the applicant the sale was on ***"as is where is and whatever there is basis; purchaser was required to pay 25% of the purchase consideration within one month and the balance amount of purchase consideration will have to be paid within three months thereafter by the purchaser and the earnest money deposited by the offerer was required to be adjusted in the last installment; no nomination will be permitted; the properties shall be handed over to the purchaser on payment of full consideration to the Official Liquidator; it will be open for the highest offerer to level the lands in question under the supervision of the Official Liquidator and it will also be open to depute the Security Guards outside the aforesaid properties at his own costs but the same would be under the supervision of the Official Liquidator till the full consideration is paid; the purchaser to***

agree on other terms and conditions of the tender form over and above the conditions stated hereinabove." It is required to be noted that the applicant was required to comply with all the terms and conditions stipulated in the Tender Form over and above the terms and conditions mentioned in the Order dated 28.12.2006, the applicant was required to comply with the following terms and conditions:-

"Condition – 17 :- If the purchaser do not pay the balance amount or purchase consideration to the Official Liquidator as directed by the Hon'ble High Court in time, the Official Liquidator shall terminate the sale and forfeit the deposit. This condition and other conditions in respect of the payment of purchase consideration are without prejudice to the right of the Official Liquidator. If the vendor terminates the contract as aforesaid he will be entitled to put the properties for re – sale with the permission of the Hon'ble High Court.

<u>Condition – 24</u> :- If the purchaser fails to pay the purchase money / balance amount and all costs charges and expenses payable by him to the vendor within time specified there-in-above and in all other respect of perform these conditions or any of them, his entire amount deposited till then shall be forfeited and the vendor shall be at liberty to sell the property tendering any conveyance and/or assignment to such defaulting purchaser and without being bound to sell the property at such time and subject to such condition and in such manner in all respects as he shall think proper. The deficiency in price, if any, occasioned by such second sale and all cost charges and expenses occasioned for such subsequent sale or any attempted second sale, the amount with interest thereon, as may be fixed by the Hon'ble High Court, from the date of confirmation of first sale shall be immediately after such subsequent sale be made good and paid by the defaulting purchaser as by the way of Liquidated damages. This condition is not affected by any other conditions thereof."

Thus, on non-deposit of / non-payment of the purchase consideration as stated hereinabove, the necessary consequences as mentioned in Condition Nos.17 and 24 of the terms and conditions and of the Tender Form, which are reproduced hereinabove, must follow. It is required to be noted that the applicant has accepted all the terms and conditions of the tender form as well as other terms and conditions while confirming the sale in favour of the applicant on 28.12.2006. It is also required to be noted that the offer submitted by the applicant was unconditional and was not depending upon any finance from the overseas and/or subject to any clearance from the Income Tax Department and/or authority under the FEMA Act. By not depositing 25% of the sale consideration, there is a breach of the concluded contract i.e. the order passed by this Court dated 28.12.2006 as well as terms and conditions of the tender agreement. Thus, on breach of terms and conditions of the order

passed by this Court dated 28.12.2006 as well as the terms and conditions of the tender agreement, necessary consequences on breach of terms and conditions must follow, meaning thereby, the sale in favour of the applicant is terminated; the EMD deposited by the applicant is required to be forfeited and the property in question is required to be put to auction again on second sale and if the offer received is less than the offer made by the applicant i.e. Rs.33.50 Crores, in that case, whatever the loss, is required to be recovered from the applicant by way of liquidated damages. In view of the unconditional offer submitted by the applicant and confirmed by this Court, the prayer of the applicant to extend the time to deposit 25% of the sale consideration for a further period of 30 days cannot be granted. Granting of such time would be to modify the terms and conditions of the tender agreement as well as the conditions imposed by this Court while confirming the sale in favour of the applicant dated 28.12.2006. Once the applicant

has agreed to abide by the aforesaid terms and conditions, it is not open for the applicant now to pray for extension of time.

10. It is the submission on behalf of the applicant that as the finance is to come from overseas and certain procedural formalities are to be completed under the Income Tax as well as FEMA Act, it has taken time. It is required to be noted and as stated above, offer submitted by the applicant was unconditional and was not depending upon any finance from the other party and/or the financer of overseas. When the applicant has submitted the offer and has purchased the aforesaid property for a sale consideration of Rs.33.50 Crores then the applicant was aware that he is required to deposit / pay 25% of the sale consideration within one month and the balance amount within three months and therefore, the applicant was required to manage for the said finance well in advance. It was for the applicant to manage his affairs and finance well in advance before

agreeing to abide by the terms and conditions. Under the circumstances, the prayer of the applicant to grant extension cannot be granted as the applicant has agreed to accept the terms and conditions unconditionally.

11. There is another reason also why the prayer of the applicant to extend the time cannot be granted. That the inter-se bidding had taken place between the applicant and other bidders and all the offerers were made to understand and agree to the terms and conditions of the tender agreement i.e. to pay 25% of the sale consideration within 30 days and the balance amount within 3 months thereafter and that no nomination will be permitted. If the prayer of the applicant to extend the time to pay 25% of the sale consideration is extended for a further period of 30 days in that case an opportunity is also required to be given to all those offerers. Under the circumstances also, the said prayer cannot be granted.

12. It is also required to be noted that the applicant was to deposit first 25% of the sale consideration within a period of one month i.e. on or before 28.1.2007 and the present application for extension of time has been filed on 31.1.2007 i.e. after completion of the period under which the applicant was required to make the payment as per the offer. The applicant was required to submit an application for extension of time within the stipulated time and once that period is over, the present application to extend the time which has already expired is not maintainable. One can understand if the application for extension of time is made on or before 28.1.2007. Once the relevant date i.e. 28.1.2007 is over, it will not be open for the applicant to move an application for extension of time after that period is over. Under the circumstances also, the present application is required to be dismissed.

13. Similarly, the prayer of the applicant to permit him to nominate one person cannot be granted as

not only in the tender agreement but in the order dated 28.12.2006 also it is specifically provided that no nomination will be permitted and which the applicant has accepted unconditionally. Even otherwise, to permit the applicant to nominate would be against the interest of the State Government. If the sale is confirmed in favour of the applicant and the nomination is permitted, then in that case, there will be a transfer and by permitting the nomination the said transfer would be without payment of any stamp duty. Under the circumstances, the prayer of the applicant is not required to be granted.

14. For the reasons stated above, the application is required to be dismissed and is, accordingly, dismissed. The amount of EMD deposited by the applicant i.e. Rs.52.50 Lacs is ordered to be forfeited and the sale in favour of the applicant is terminated. The Official Liquidator is directed to put to auction the aforesaid property again and re-invite the offers by

giving publication in two local newspapers as done earlier and to invite the offers and submit the same before this Court and the necessary consequences as per the Condition Nos. 17 and 24 of the tender form must follow.

15. This application is accordingly disposed of. No costs.

[M.R.Shah, J.]

kdc